



The Lautenberg Amendment

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LAUTENBERG AMENDMENT



*“Domestic violence is
incompatible with
military service and
contrary to our core
values”*

-MARADMIN

186/03



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Overview

- The Gun Control Act of 1968
 - Denied Felons ability to possess firearms
 - Public Interest Exception
 - Exempted state and federal employees
 - Duty related possession only
- The 1994 Amendment
 - Protective orders



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Overview cont'd

- The Lautenberg Amendment - 1996
 - Amended the Gun Control Act of 1968
 - Makes it a felony for anyone convicted of a “misdemeanor crime of domestic violence” to ship, receive, or possess firearms or ammunition
 - Revoked the public interest exception



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Purpose of Amendment

- To get and keep firearms out of the hands of those individuals with domestic violence convictions.



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Military Exception

- There is no military or law enforcement exception to the Lautenberg Amendment
- This is not an oversight



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18 U.S.C. §922(d)(9)

- It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person-- ... has been convicted in any court of a misdemeanor crime of domestic violence.



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18 U.S.C. §922(g)(9)

- It shall be unlawful for any person-- ... who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport ..., or possess ..., any firearm or ammunition; or to receive any firearm or ammunition



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18 U.S.C. §921(a)(33)

- "misdemeanor crime of domestic violence" means an offense that--
- (i) is a misdemeanor under Federal or State law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon,

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Three Elements of a Qualifying Conviction

1. Misdemeanor crime
2. Domestic Violence
3. Conviction



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What is a Misdemeanor?

- Defined by Federal or State Law
 - Does NOT include NJP/Office Hours/Captain's Mast
 - Does NOT include Summary Court-Martial
 - Does NOT include CRC findings
 - Courts-martial are NOT classified as misdemeanor or felonies



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Offender/Victim relationship

- **Domestic violence occurs when the offender is:**
 - the current spouse of the victim
 - the former spouse of the victim
 - the parent of the victim
 - the guardian of the victim
 - shares a common child with the victim
 - someone who is cohabitating as a spouse, parent, or guardian
 - someone who used to cohabit as a spouse, parent or guardian
 - Someone similarly situated has a spouse, parent, or guardian of the victim



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What is a “Conviction” ?

- Determined by State or Federal law
- “Nolo Contendere” pleas
 - same effect as a plea of guilty for sentencing but may not be considered as an admission of guilt for any other purpose.
- Due process thresholds
- Does not include deferred prosecutions or similar alternative dispositions.



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Bottom Line

- Anyone who commits a misdemeanor crime:
 - That involves “Domestic Violence”
 - And is subsequently convicted of this crime
- Cannot own, possess, or be issued weapons – even in the line of duty!



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DoD Policy

- Current Policy approved and effective on November 27, 2002
- Policy applies to felony* and misdemeanor crimes of domestic violence, and general and special courts-martial that otherwise meet the definition of “crime of domestic violence.”
- Two separate memorandums (civilian and military)
- DoD Directive/Instruction in process



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DoD Policy (generally)

- Must periodically inform personnel of amendment, consequences, and DoD policy.
- Military and civilian personnel have an “affirmative, continuing obligation” to notify command/supervisor of qualifying conviction.
 - That they currently have or later obtain.
- Requires use of DD Form 2760



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DoD Policy for Military

- Qualifying conviction bars applicants from military service and for current members:
- Requires retrieval and suspension of access to firearms and ammunition



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DoD Policy for “Covered” Employees

- Requires Services to identify all “covered” civilian employees
 - positions that include duties under Gun Control Act, including selling, disposing, receiving, possessing, shipping or transporting firearms and ammunition.
 - Requires use of DD Form 2760
- Personnel with qualifying conviction cannot be assigned or detailed to covered position.



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DoD Policy Excludes:

- Summary Courts-Martial convictions and nonjudicial punishment from the definition of qualifying conviction.
- Major weapons systems from definition of firearms and ammunition (tanks, crew-served weapons, aircraft, etc.)



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Questions?

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